

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

CHERYL REAL ESTATE, LLC
18622 County Highway X
Kiel, WI, 53042

Plaintiff,

Case No.:

v.

MANITOWOC COUNTY
1010 South 8th Street
Manitowoc, WI 54220

Defendant.

COMPLAINT

NOW COMES Plaintiff, Cheryl Real Estate, and as and for a Complaint against Defendant Manitowoc County, allege and aver as follows:

1. Plaintiff Cheryl Real Estate, LLC, is a Wisconsin limited liability company with Registered Agent Cheryl Vogel and principal offices located at 18622 County Highway X, Kiel, WI, 53042.
2. Manitowoc County is a municipal corporation founded under the laws of Wisconsin with County Executive Bob Ziegelbauer.
3. On or around June 24, 2019, Manitowoc County filed a Complaint against Cheryl Real Estate contending that it failed to replace a septic system quickly enough.
4. On or around July 23, 2019, Cheryl Real Estate filed the below timely:

FILED

JUL 23 2019

CLERK OF CIRCUIT COURT
MANITOWOC COUNTY, WI

Manitowoc County Corporate Council
1010 South Eighth Street
Manitowoc, WI 54220

Case No. 2019-CX-*le*
Case Code: 30109

7-23-19

We have retained the services of Mark Meyer from Meyer Plumbing to install a new septic system at 10731 Hwy 42. He is currently working with Kayla from the County and with Jessica from the County Health Department on the changes with the septic and all of the changes that the Health Department is now requiring be made with plumbing inside the building as well.

Cheryl Real Estate LLC
18622 County Road X
Kiel, WI 53042
920-973-0134

5. Two days later, on July 25, 2019, Attorney Peter Conrad filed the following affidavit with the Court:

NOTICE OF MOTION

Manitowoc County, by Corporation Counsel Peter J. Conrad, will move this Court for a default judgment against the defendant, on **August 30, 2019, at 9:00 a.m.**, before the Honorable Jerilyn M. Dietz, Branch II Circuit Court Judge, in Room 218 of the Manitowoc County Courthouse, 1010 South 8th Street, Manitowoc, WI 54220.

MOTION FOR DEFAULT JUDGMENT

Plaintiff Manitowoc County moves this Court for default judgment against the Defendant in the above-referenced case under Wis. Stat. § 806.02(2) due to the Defendant's failure to join issue. The County requests the court order judgment against Defendant. The County's motion is based upon the following:

- The County filed a Complaint on June 24, 2019 against the defendant for violation of Manitowoc County Code §§ 13.10, 13.11(4)(a), 13.37(1), 13.37(6), and 13.37(7).
- The Defendant was served with a Summons and Complaint for this action on July 3, 2019 by the Manitowoc County Sheriff's Office. Proof of Service is attached and incorporated herein by reference as **Exhibit A**.
- The Defendant has failed to provide an answer or join the issue in any manner within twenty days of service.
- The violation is a continuing violation.

Dated this 25th day of July 2019.

2019-PZ-8

Case 2019CX000006

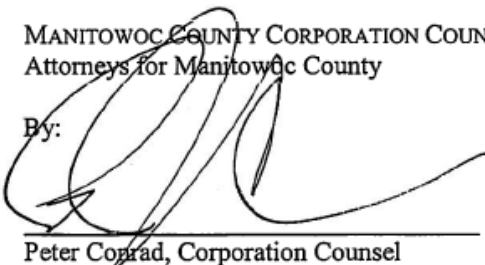
Document 6

Filed 07-25-2019

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MANITOWOC COUNTY CORPORATION COUNSEL
Attorneys for Manitowoc County

By:



Peter Conrad, Corporation Counsel

6. This document was filed by Peter Conrad, corporation counsel for Manitowoc County, under color of state law.

7. This signed document filed with the Court states that “[t]he Defendant has failed to provide an answer or join the issue in any manner within twenty days of service.”

8. Cheryl Real Estate had submitted its filing two days earlier.

9. Even if Cheryl Real Estate’s filing is not considered an “answer”, it certainly joined the issue “in some manner”.

10. Manitowoc County never moved to strike Cheryl Real Estate’s answer or to declare it insufficient or did anything else with the document.

11. On the basis of Conrad’s affidavit stating that no answer or other attempt to join issue was made, the Manitowoc County Circuit Court entered default judgment against Cheryl Real Estate.

12. Because the Manitowoc County Circuit Court entered a default judgment against Cheryl Real Estate, Cheryl Real Estate was deprived of its due process rights to a hearing by the filing of a false affidavit under color of state law.

13. Judgment was entered against Cheryl Real Estate in the amount of \$12,827.50 which remains due and owing.

14. Conrad filed the affidavit either intentionally to deprive Cheryl Real Estate of its due process rights or recklessly without verifying that the statements in the filed document were accurate.

15. Conrad’s affidavit says definitively that the Defendant failed to provide an answer or join issue in any way when, if he had checked the Court file or the e-filing system, he would have seen that such a document was in fact filed two days before his affidavit was submitted.

16. It is outrageous and violates Cheryl Real Estate's rights to due process for corporation counsel to file a false document with a court to obtain a default judgment and then, when Cheryl Real Estate moves to reopen the default, to object even to that.

17. This default was obtained under color of state law, violates Cheryl Real Estate's constitutional right to due process, and is a stunning example of a public official lying to a court about the existence or absence of filed documents and obtaining a monetary judgment against a taxpayer by depriving her of her right to due process.

18. The requirement that court filings accurately reflect the state of the court file is ministerial in nature.

19. Cheryl Real Estate requests relief pursuant to 42 U.S.C. § 1983, including but not limited to the attorneys fees associated with bringing this action and with litigating the state court matter, punitive damages, compensatory damages, exemplary damages, and other damages that this court may see fit.

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

- A. For attorneys fees associated with bringing this action and with litigating the state court matter;
- B. For punitive damages;
- C. For compensatory damages;
- D. For exemplary damages; and
- E. For all other damages this Court may see fit.

PLAINTIFF DEMANDS A TWELVE PERSON JURY

Dated this 2nd day of November, 2020.

MAYER, GRAFF & WALLACE LLP

By: s/ Justin F. Wallace
Justin F. Wallace
State Bar No.: 1069331
Attorneys for Plaintiff Cheryl Vogel

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